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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aydin Corporation

File: B-224185

Date: November 28, 1986

DIGEST

1. Solicitation requirement that microwave radio equipment to be furnished have been operated successfully as a full integrated system carrying real traffic in either military or commercial applications is not satisfied by an offeror proposing to furnish equipment that will not become operational until the scheduled delivery of the system in the future.
2. Protest based upon alleged improprieties in a solicitation (allegedly unduly restrictive terms) which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals.

DECISION

Aydin Corporation, Aydin Systems Division (Aydin), protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. F64608-86-R-0001, issued by the Department of the Air Force, Pacific Information Systems Division, Hickam Air Force Base, Hawaii, for the acquisition and installation of a digital microwave radio system for the Philippines Digitization Reconfiguration Program.^{1/} The Air Force was essentially seeking commercially available equipment and determined that the equipment

^{1/} The Philippines Digitization Reconfiguration Program seeks to upgrade microwave links of the Defense Communications Systems in the Republic of the Philippines from an analog system to a state-of-the-art digital microwave system. In addition to furnishing the digital microwave system, the successful offeror was also required by the RFP to provide nonpersonal field support services, training, and spare parts.

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offered by Aydin had not previously been operated successfully as an integrated system as required by the RFP's specifications. Aydin contends that the Air Force misevaluated its proposal.

We deny the protest in part and dismiss it in part.

Section L-14 of the RFP stated that the government "is interested in utilizing commercially available equipment to the maximum extent possible." The RFP cautioned offerors that proposals must meet all solicitation requirements. The RFP provided that award would be made to the offeror whose proposal met the mandatory requirements and demonstrated (in order of precedence): 1) the lowest overall cost; 2) operational effectiveness, efficiency, and flexibility of equipment; and 3) the most advantageous delivery schedule. Further, Section M-1, entitled "Evaluation Procedures for Technical Proposals," specifically stated that a proposal would be considered acceptable if it met the requirements of Equipment Performance Specification EPS-85-002, dated January 31, 1986. Moreover, Section M-1 of the RFP advised offerors that "evaluation will consist of a detailed technical review of each part of the proposal pertaining to each section of EPS-85-002." That specification provided, in part, as follows:

"Performance Acceptability. In order to be acceptable under this specification, the bidder must offer radio and digital multiplex equipment that has been operated successfully as a full integrated system carrying real (not simulated or test traffic) in either military or commercial applications. Equipment operated in a laboratory environment . . . or that was operated in order to further its design development or to validate or test its performance characteristics is not acceptable."^{2/}

Four proposals were received by June 27, 1986, the closing date for receipt of initial proposals. After evaluation of proposals, the contracting officer, by letter dated July 28, 1986, specifically asked Aydin whether its offered equipment had been sold and "is carrying live traffic today?" By letter dated August 13, 1986, Aydin responded that its offered system had been sold to several customers, including the government of Taiwan (installation scheduled for

^{2/} The solicitation, however, did permit offerors to modify the radio frequency section of existing equipment to allow the equipment to operate on military frequency bands.

completion on October 31, 1986), Vandenberg AFB (a contract signed on June 30, 1986), and the Norwegian government (delivery scheduled for July 1987). On September 10, 1986, the contracting officer thereupon rejected Aydin's proposal as unacceptable because he found that Aydin "did not propose equipment that had operated successfully as [a] fully integrated system as required" by EPS-85-002. This protest followed.

We think the contracting officer clearly acted reasonably in rejecting Aydin's proposal because Aydin, by its own admission, did not propose a system that had operated successfully as an integrated system carrying real traffic. See generally AUL Instruments, Inc., B-186319, Sept. 1, 1976, 76-2 CPD ¶ 212. Nevertheless, Aydin advances several arguments in support of its position that its proposal should have been accepted.

Aydin states that it is an experienced supplier of microwave radio systems for both commercial and military applications but is a "relatively new entrant in the field of digital radios of the exact type covered by the RFP." However, Aydin states that it is in the process of delivering substantially identical equipment to customers and that this equipment will have carried real traffic by the time delivery is due under the subject solicitation. Further, according to Aydin, the solicitation only required commercially available equipment to the "maximum extent possible" and therefore the solicitation should not be interpreted as requiring identical equipment already sold, delivered, and in operation at or prior to the date of the RFP.

We find no merit to these contentions. The solicitation specified that "[i]n order to be acceptable under [the] specification," the equipment had to be in prior operational use. Further, the RFP clearly advised offerors that compliance with this specification would be evaluated and that all offerors had to meet all mandatory requirements. We therefore think that compliance with this requirement at some future time of delivery simply does not meet this requirement. In short, Aydin, by its own admission, failed to offer equipment that had been in operational use as required by the terms of the RFP.

Next, Aydin argues that the Air Force's interpretation requiring identical equipment in prior operational use, if correct, would constitute a "qualification requirement" under the Defense Procurement Reform Act of 1984 (Act), 10 U.S.C. § 2319 (Supp. III 1985), and would be illegal because the

procedural requirements of that Act have not been complied with. The Act generally provides procedures for establishing qualification requirements by contracting agencies for contract awards, such as a qualified products list, qualified manufacturers list, or qualified bidders list. The Act defines "qualification requirement" as a "requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract." Here, there was simply an RFP specification requirement that firms offer equipment, any equipment, that has been in operational use and that meets the specifications. We therefore see no applicability of the Act to the situation here.

Finally, Aydin argues that if the Air Force's interpretation of the RFP specification is correct, then the RFP specification is unduly restrictive of competition. However, we think the RFP, in unmistakable terms, clearly advised offerors of this prior use requirement. Aydin therefore knew or should have known of this Air Force requirement upon receipt of the solicitation but did not complain about its provisions until its proposal was rejected. In this regard, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986). Aydin failed to do so and we therefore dismiss this protest ground as untimely.

The protest is denied in part and dismissed in part.

for *Aymon Sfor*
Harry R. Van Cleve
General Counsel